



Five Cases  
of Will in  
Conscience,  
and by No.  
A Learned  
Hand.

London Printed  
for  
Henry Brome.  
1666.



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Occasionally Determined  
BY  
*A late Learned Hand.*

*He being Dead, yet speaketh.*

Printed by E. C. for Henry Brome at  
the Gun in Ivy-lane, 1666.

FIVE

CASES

OF

Conscience:

Occasionally Determined

BY

A late Learned Hand

IN A. XI. A.

At the Court of the Admiralty

LONDON

Printed by E. C. for J. W. & J. B. at the

the end of the year 1766.

A LETTER from a Friend  
concerning the ensuing  
Cases.

SIR,

HAVING perus'd the Papers you sent me, I  
can safely vouch them for genuine, and  
not in the least Spurious; by that resem-  
blance they wear of their Reverend Author; and  
therefore you need not fear to bring them to the  
Publique test, and let them look the Sun in the  
face.

'Tis true, their first Commission was but short,  
and long since expired, they being designed only to  
visit, and respectively satisfy some private Friends;  
yet I cannot see what injury you will offer to  
his sacred ashes, if, by renewing that, you send  
them on a little farther Embassy for the common  
good.

Indeed the least remains of so matchless a Cham-  
pion, so invincible an Advocate in Foro Theolo-  
gico, like the filings and fragments of Gold, ought  
not to be lost; and pity the world was not worthy  
many more of his learned Labours.

*But---Præstat de Carthagine tacere quam pauca dicere; far be it from me to pigeon the wings of his fame, with any rude Letters of Commendation; or, by way of precarious Pedantry, to court any man into a belief of his worth, since that were to attempt Iliads after Homer, and spoil a piece done already to the life by his own Pencil, the works whereof do sufficiently praise him in the gates.*

*All I aim at is, to commend and promote your pious intention, to give the World security, by making these Papers publique, that they shall never hereafter stand in need of any other hand to snatch them out of the fire, a doom (you say) once written upon them.*

*Nor do I less approve your ingenious prudence in determining to prefix no Name, it being as laudable not to speak all the Truth sometimes, as to forbear telling a Lie for advantage.*

*'Tis (I confess) the mode of late to hang Jewels of Gold in a Swines snout; I mean, to stamp every impertinent Pamphlet with some great Name, or voluminous Title to make it vend the better (Laudat venales qui vult extrudere merces) at which the gild Reader repenting his prodigality of time and patience is forced to cry out all along, Beaucoup de bruit, peu de fruit, and in the end sums up its just character in a few words, Nil nisi magni nominis umbra.*

*But yours is the only method to deal with wise and rational men, who are not so easily taken with Chaff (the multitude or greatness of words and*

and names) as with the true weight and worth of things.

Let me tell you, that whoever is not a meer stranger to your learned Authors former Tractates, must needs spell his name in every page of this without any other Monitor.

I have no further to say, unless I should bespeak your vigilance over the Press, which by her daily seeming and inexpertness, or (at least) negligence of the ~~Printer~~ <sup>Printer</sup>, is wont to spoil good births with monstrous deformities, and unpardonable Errata; so you will avoid a double guilt contracted by some without fear or wit of abusing your critical Reader on the one hand, and your most judiciously exact Writer on the other; and (if clear may contribute any thing more) very much gratifie the most unworthy of his Admirers, and

Your Friends, &c.

The

**The Five Cases Determined.**

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The CASE of  
*Marrying with a Recusant.*

SIR,



Ours of July the 1d. I yesterday July the 6th. received. In Answer to the Contents whereof (desiring that my Services may withall be most humbly presented to my very much Honoured Lord) I return you what my present thoughts are concerning the particulars therein proposed. First, For Marrying a Daughter to a Professed *Papist* (considered in *Thesi*, and as to the point of Lawfulness only) I am so far from thinking the thing in it self to be simply, and *toto genere*, unlawful; that I dare not condemn the Marriage of a *Christian* with a

B

*Pagan*

*Pagan* (much less with any other *Christian* of how different Perswasion soever) as simply evil and unlawful, inasmuch as there be Causes imaginable, wherein it may seem not only Lawful but Expedient also, and (as the exigence of Circumstances may be supposed) little less then necessary so to Intermarry. But since things lawful in the General and in *Thesi*, may become (by reason of their inexpediency) unlawful *pro hic & nunc*, and in *Hypothesi* to particular persons; and that the expediency or inexpediency of any action to be done, is to be measured by the Worthiness of the end, the conjuncture of present Circumstances, and the probability of good or evill consequents and effects, prudentially laid together, and weighed one against another; I conceive it altogether unsafe for a Conscientious Person



Person (especially in a business of so great concernment, as the Marrying of a Child) to proceed upon the General lawfulness of the thing, without due consideration of Circumstances, and other requisits for the warranting of particular Actions. Now as for the Marriage of a Daughter with one of so different Perswasion (in point of Religion) as, that they cannot joyn together in the same way of Gods worship, which is the case of a Protestant and a Papist, it is very rare to find such a concurrence of Circumstances, as that a Man can thence be clearly satisfied in his Judgment (without just cause of doubting the contrary) that it can be expedient to conclude upon such a Marriage; and how dangerous a thing it is to do any thing with a doubting conscience, we may learn from Rom. 14. 13. For the evil consequents

probably to ensue upon such Marriages, are so many and great, that the conveniences which men may promise to themselves from the same (if they should answer expectation, as seldom they do to the full) laid in an equal ballance thereagainst, would not turn the scale; and in one respect the danger is greater to marry with a Papist, then with one of a worse Religion; for that the main principle of his Religion, (as a *Papist*) is more destructive of the comfort of a Conjugal Society, then are the Principles of most Heretiques; yea then those of *Pagans* or *Atheists*; for holding that there is no Salvability but in the Church; and that none is in the Church, but such as acknowledge Subjection to the Sea of *Rome*; it is not possible, but that the Husband must needs conclude his Wife to be  
in

in the *state of Damnation*, so long as she continueth *Protestant*: whence one of these two great inconveniences will unavoidably follow; that either he will use all endeavours, engines, and artifices, to draw her to the Church of *Rome* (as indeed who can blame him to bring his Wife into a capacity of everlasting salvation?) the restless importunity whereof (together with the ill advantages they of that party can make from the sad Confusions that are amongst us in these times) it will be very hard for one of the weaker sex perpetually to resist; or else in case she stand firm in her Religion against all Assaults and Attempts to the contrary, whatsoever he may be towards her in outward carriage, he cannot but in his inmost thoughts, pass judgment upon her, as an obstinate and desperate

rate Heretique, and (so living and dying) an accursed and damned Creature. These are sad things both; and it is not conceiveable how a Woman so matched should live with any comfort, or ever hope to see a good day, wherein she shall not either be tempted from her Religion, or censured for it; what assurance can she have of his good affections towards her, who is bound not to permit any better opinion of her, then of a Reprobate and Castaway? It is possible there may be so much good nature in the Husband as to take off somewhat from that rigidness, which otherwise the Principles of his Religion would bind him to, or so much discretion, sweetness, and obligingness in the Wives demeanour towards him, as to preserve a good measure of Conjugal Affection between them; not-with-

withstanding their different persuasions: This I say, is possible; and where it happeneth so to be, it rendereth the condition of the Parties so much the less uncomfortable; and that is the utmost of the *happiness*, that is to be hoped for from such Marriages: and I think there cannot be produced many examples thereof; yet even there, there cannot be that cordial Affection, and fulness of Complacency (wherein yet the chiefest happiness of Conjugal Society consisteth) that would be, if the same Parties (supposed to be of the same Qualifications otherwise) were also of the same Religion. I omit other *economical* differences, that may and very frequently do (occasionally) arise, betwixt Husband and Wife from this difference in Religion, as concerning the Entertainment of

B 4 Friends,

Friends, the choice of Servants, the education of Children (very considerable things all) besides sundry others perhaps of less moment; yet such as are apt to breed Discontents and Jealousies, and sometimes break out into great Distempers in the Family: Such Marriages therefore I should utterly dissuade; especially in the *Nobility, Gentry, and Commonalty*, where there is choice enough otherwise to be had of Persons of equal Degree, Estate, and Education of the same Religion to match withall: Kings and Princes for reasons of State, and because there is little choice of Persons of equal Dignity with themselves, are therefore oftentimes by a kind of Necessity, put upon such Marriages; yet even there, where they are certainly the most excusable, it hath been observed that such Marriages

ages have proved for the most part unfortunate.

The other Particular proposed in your Letter is concerning the *Marriage of a Daughter to one that Professeth the Protestant Religion, but having had Popish Parents, may be suspected (though he deny it) to be that way inclined.* The resolution whereof (as of most other *Cases and Practical Questions*) will depend very much upon the consideration of *Circumstances*, whereunto being altogether a stranger, I am lesse able to give Judgement in the Case with any certainty; only in order to the resolution of the Question, these (to my understanding) seem to be the most proper and important Enquiries.

*First*, Whether the Parents of the young Person be living or no, one or both? if both be dead, the temptations

ons

ons from them (which in such Cases are wont to prevail very much) are by their Death clearly superseded; and then the danger is by so much lesse: but if either be living, there can be little security of the Sons continuance in the Protestants belief, (notwithstanding his present profession thereof) when he shall be assaulted with the whole authority of them to whom he oweth reverence.

Secondly, With what degree of confidence, and with what kind of asseverations he professeth the one, and denieth the other Religion; for although they that out of design put on a counterfeit vizard, use all the art they can to dissimble it; yet very seldom can it be done so cunningly, warily, and constantly, but that at some time or other, the dissimulation will unawares bewray it self to the eye of a curious observer.

Thirdly,



Thirdly, What measure of understanding the young Person (who is you say of great *Abilities* for his Age) hath in the *Fundamental Articles* of the *Christian Religion*; those I mean, wherein the *English* and *Romish Churches* are at agreement, for in those the substance of *Christianity* consisteth; he that rightly understands those *Catholique Truths* taught in the *Catechisms* of both Churches, and concerning which all *Christendom* (in a manner) are at a perfect accord; and then will but suffer himself to consider, that the *Church of England* doth not impose upon the judgments and consciences of her Members, any thing to be believed, or received, as of necessity to *Salvation*, then what is truly *Catholique*, and by her Adversaries confessed so to be; and consequently that the difference betwixt her and the *Romish Party*, is wholly about those

Addi-

*Additional*s or *Superstructures*, which they of the *Roman* faith require to be believed, and received with like necessity as the former; but appear to us of this Church respectively, either evidently false, or of doubtful truth, or not of absolute necessity to be believed; I say, whosoever well considereth this, may rest satisfied in his judgment and conscience, that the Faith taught and professed in the Church of England, is a plain and safe way to lead a *Christian Believer* to *Eternal Salvation*, if he withal lead his life and conversation answerable thereunto.

To the last particular in your Letter, all the return I have to make is no more, but an humble acknowledgement and sense of his *Lordships* noble favours towards me, in entertaining an opinion of me more suitable to his own goodness and ingenuity, then to  
my

my merit : I know not, nor desire to know of any occasions likely to draw me into those parts so distant from me (being grown into years, and infirmities, that render me very unfit for long Journies ) unless the business of my *Sons Marriage*, which occasion'd my late Journey to *London*, require a second thither in *Michaelmass Term*. But I am so sensible both of the trouble and charge of such Journies (besides some inconveniences to my affaires at home, whilest I am long absent) that I will avoid it, unless there be no other remedy : I shall not willingly decline any employment (within my low and narrow sphere, both of outward condition and parts) wherein my service may be any wayes useful or but acceptable, to that noble and excellent Person ; but truly Sir, I conceive there will be little need of my further

further endeavours, as to that particular expressed in yours, whether what I have written now give *satisfaction*, or not; there are persons nearer hand, whom I know to be much fitter for an employment of that nature, then myself, who have ever studied *Peace* more then *Controversies*; and namely one at the next door to *Hatton House*, whose *sufficiency* and *readiness* in that kind is well known to *Mr. Geofery Palmer*: Sir, I wish you *happinefs*, desire your *prayers*, and rest,

July 7. 1656.

Your faithful and  
humble Servant.

The CASE of  
UNLAWFUL LOVE.

**T**WO Gentlemen who were very good Friends, and both of them Married, used to converse together familiarly; one of these took a special liking in the company and conversation of the others Wife, and she answerably in his; which afterwards proceeded to some degree of Love; which though ever restrained, and preserved without any violation of Chastity, grew yet in the end to this issue, that they mutually vowed either to other, that if happily either of them should at any time be freed from the Bond of Matrimony (either he by the death of his Wife, or she by the death of her Husband) that party so freed should  
con-

continue afterwards unmarried, and stay for the other, till the other should be freed also, though it were during life: Now so it is, that this Gentlewomans Husband died, and her affections and resolution so altered, that gladly she would Marry, if she might be released of the Engagement of that Vow; or perswaded of the unlawfulness or nullity thereof.

Concerning the present Case, as it is propounded, sundry Points are needful to be resolved, that so we give a right judgment *de praterito*, of what is already done for the time past, in respect of the Gentlewomans former promise, and sound direction also *de futuro*, which is further to be done for the time to come, in respect of her present distresses.

Point

Point I.

OR. 1. First of all, It is considerable, whether the promise made by the Gentlewoman and her friend, were properly a Vow or no? so it is called in the proposal of the present Case, and that agreeable to the common use of speech with us here in England, who extend the word [Vow] very far; neither shall I make scruple in the ensuing Discourse, sometimes to call it so; for *Loquendum ut Vulgus*. But to speak properly, a Vow is a word of a narrower extent than a Promise, every Vow being indeed a Promise, but not every Promise necessarily a Vow; (a) Promises may be made indifferently, either to God or Men; but Promises made to Men are no Vows; wherefore it is usually inserted into the definition of a Vow, as a con-

C

dition

(a) *Votum feli-  
Deo fit sed Pra-  
missio potest fi-  
eri etiam Ho-  
mini Aquit. 2.  
q. 88. s. ad 3.*

dition (b) essentially requisite thereunto, that it be made unto  
(b) Promissio Dei  
facta est essentialis  
esset. Ibid. God alone, inasmuch as  
to make a Vow to any  
Creature, is interpretative to exalt the  
Creature into the place of God, and  
so to make it an Idol, which is clear  
not only from the express (c) precept  
(c) Psal. 76. 11.  
Numb. 21. 2.  
Judg. 11. 30.  
1 Sam. 15. 22. of God, and the constant  
(d) Numb. 21. 2.  
Judg. 11. 30.  
1 Sam. 15. 22. (d) examples of godly men,  
and the usual (e) phrases  
(e) Psal. 36. 12.  
Psal. 36. 12. of the Holy Ghost in the  
Scriptures, but also from  
the universal consent of all  
learned men, both Divines  
(f) Spausio quod  
obligatur Des. Cic.  
2. 1. 56. (f) and others, and even of  
(1) Heathens also: This  
Gentlewoman's promise then being  
made to the Gentleman her Friend  
alone, as was his also to her, and nei-  
ther of both to God, is therefore to be  
taken for a mere Promise, but no Vow.



2. If for more confirmation thereof, the bound herself also by Oath, as it is not unlike, yet is it no more for all that but a meer promise still, and not a Vow; for albeit the very using of an Oath be a calling in of God into a business, and the person that taketh an Oath doth thereby set himself in the presence of God; yet an Oath calleth him in only to be a (a) witness, without any intent to make him a party to the business; whereas in a Vow he is made a party and not only a witness; whereunto agree those formes so frequent in holy Scripture, in Oaths both assertory, and stipulatory; (b) The Lord be witness between us: (c) God is my witness: (d) I take God to Record, and the like:

(a) *Jurare nihil est aliud quam Deum Testem invocare. Aquin. 2.*

*2. q. 89. 1. ex. Aug. de Ver. A. post. Sermon. 8. 28. quod affirmas.*

*si Deo Testis promiseris, id tenendum est. Cic. 3. de Offic.*

(b) *Gen. 31. 50. Judg. 11. 10. Mal. 2. 14.*

(c) *Rom. 1. 9. 1 Thess. 2. 5.*

(d) *1 Cor. 1. 30. Phil. 1. 28.*

for even as when a *promise* is made unto God, whereunto for the more *solemnity*, the *presence* of some men is required as *witnesses*, such a *Promise* is to be held for a *Vow*; because it is made to God alone, although in the *presence* of Men: So on the other side, when a *Promise* is made unto some *Man*, whereunto for the more *assurance*, the *presence* of God is required as a *witness*, such a *Promise* is not to be held for a *Vow*, because it is made unto Man alone, although in the *presence* of God.

¶ 3. Nay further, if the Gentlewoman when she thus engaged herself, did use these very words [I VOW TO GOD] or words to that effect, as we know is often done in *solemn Promises*, between Man and Man; yet neither is that sufficient to make it properly a *Vow*, for to judge rightly when *Question* is made, concerning

cerning any particular *promise*, whether it be a *Yea* or *no*; we are not to be guided so much by the *formes* of *speech*, (which are subject to change, impropriety, and many defects) as by the true intention and purpose of the *parties*, especially the *Promiser*. Now what was the whole intent and purpose of these *Parties*, when they mutually bound themselves in such sort, as in the *Case* propounded is laid down, no reasonable man can be ignorant; even this and no other, to give as good assurance as they could devise, either to other, and to receive the like assurance again, that the thing by them agreed on and promised, should be faithfully performed; and if either *Oaths* or *Protestations*, were also used by way of Confirmation, they are all in common intendment to be taken as tending to the self same purpose, without looking at

any further thing; and clearly where the Promiser hath no intention to bind himself to God, but to Man only, the Promise so made is no Vow, whatsoever formality of words may be used in the making of it.

W<sup>o</sup>. 4. Neither is the examination of this Point a curiosity either in it self fruitless, or impertinent to the Case in hand; for albeit, in that which seemeth to be the very main point of all, viz. the power of binding the Conscience, there be no material difference between a Vow and an ordinary Promise; a lawfull Promise no less binding unto performance, than a lawfull Vow; and an unlawfull Vow no more binding than an unlawfull Promise: yet there is some difference between them, and that of some importance too, in respect of the relaxation of that Bond; for since it belongeth to him to whom a bond  
 vne is

is made, to grant a release thereof: It belongeth therefore to God alone to release the obligation of a Vow; and no man hath power so to do, because the Vower by his Vow, bindeth himself to God, not to Man: whereas the obligation of a meer Promise, wherein the Promiser bindeth himself but to some Man, may be released by that Man; and a release from him is to the conscience of the Promiser a sufficient discharge from the said obligation: which Consideration of what use it will be in the present Case, will in the due place further appear. In the mean time we have evidently proved, that this Gentlewoman bound her self by Promise only, and not by Vow.

Point II,

Q. 5. We are next to enquire concerning the validity thereof, whether

or no the Gentlewoman (a) having an  
~~husband~~ Husband at that time,  
 (a) Rom. 7. 2. were so disabled in that  
 respect from making such a promise,  
 that the promise then made by her,  
 without the Husbands consent, was  
 utterly void from the very beginning;  
 For the Wife is under (b) the Law,  
 (b) Rom. 7. 2. and (c) under the power of  
 (c) 1 Cor. 7. 4. her Husband, and so is  
 not *sui juris*, nor can bind her self by  
 Vow, Oath, Promise, or otherwise with-  
 out the privity and consent of her Hus-  
 band, which consent we may prelume  
 this Gentlewoman never had, the pro-  
 mise being of that nature, that it had  
 been not only immodesty, but even  
 madneß, at all to have sought it. And  
 it is certain from the  
 (1) Numb. 30. 3. (d) Law of God, by Mo-  
 ses (to the equity whereof Christians  
 are still bound, because it's founded  
 upon

upon right Reason, and the light of Nature) that every Vow and Promise made by a person that of right hath not power to make it, is *de jure nullum*, altogether void from the first instant, and bindeth the Party no more then if it never had been made.

§. 6. If any Scruple shall arise from this Consideration, that albeit the promise made by the Wife in her Husbands life time, bind her not without his consent, so long as he liveth, because she is all that while under his power; yet after that she is loosed from the law of her Husband by his death, it shall thenceforth bind her, because she then becometh *sui juris*: I say, this maketh no difference at all in the Case; for this is a general Rule, that what (b) act soever had a nullity in it at the first, when it

(b) *Quod initio vitiosum est, non potest tractu temporis convalescere, l. 29. F. de Div. Reg. ju.*

was done, cannot by any succeeding tract of time grow to be of force. As if a young Scholar shall be instituted to a Benefice, being not of lawful years; or a young Heir make a sale of his Lands during minority, the institution and the sale as they were both void at the beginning, so they shall continue void, as well after the Clerk is of lawful years, and the Heir at full age, as before; so that to judge of the validity of any **Vow**, **Promise**, or **Covenant**, respect must be had to (c) that very time wherein it was made, and to the present condition of the person at that time, and not to any time or condition before or after: If then there were indeed, a nullity in this Gentlewomans **Vow**, at the time when she made it, there is a nullity in it still; and if it were indeed of no force to bind her then,

(c) In stipulationibus  
ad tempus spectatur  
qua contrahimus, l.  
18. F. eodem.



then, neither is it of any force to bind her now.

§. 7. But after due pondering of the matter, I rather think, that there was not a nullity in the promise at the first, neither (supposing it had been rightly qualified in other respects) was it void upon this ground; because although she were not *sui juris absolute*, it is sufficient yet, that she was so *quantum ad hoc*. For a person that is under the power of another, hath yet power of himself, (and so is *sui juris*) to dispose of all such things, as by the free disposal whereof, the proper right of him, under whose power he is, is no way prejudiced; but in whatsoever may be prejudicial to the other in any of his Rights, he is *juris alieni*: neither may dispose thereof without the others consent; and if such a person shall make a vow, or other promise concerning any  
 203 of

of those things, wherein he is *sui juris*, such vow or promise shall stand good, and is not void (though possibly it may be vitious in other respects) from the inability of the person that maketh it. As for example, if a *Servant* shall promise to his own *Father* to work with him a day or two in *Harvest*, this promise unless his *Master* consent thereunto, shall be void, because the *Master* hath a right in the *Servants* work, to which right it would be prejudicial if the *Servant* should dispose thereof after his own pleasure; but if such a *Servant* shall promise unto his needy *Father* to relieve him from time to time with a third or fourth part of all such wages as he shall receive for his service, this promise shall be good of itself; neither shall the *Masters* consent be requisite to make it so, because the *Master* hath no Right at all in the  
the

the Servants wages; wherein to be prejudiced by the Servants disposing thereof according to his own mind. Now forasmuch as the Husbands right and power over the Wife ceaseth together with his life, (as <sup>(a) Rom. 7.</sup> the Apostle <sup>1, 3.</sup> (4) expressly teacheth) and so cannot be prejudiced by any act of the Wife done after his Decease; It is manifest that the Wife is *juri juris* to make a vow or promise during her Husbands life time, concerning something to be done after his decease, in case she overlive him, because his right will be expired before the performance of the said vow or promise be due; as to give instance in a Case not much unlike to this in question; A Wife estated upon her Marriage in a Jointure or Annuity for her life of an 100 l. per annum, maketh a promise in her

her Husbands life time to one of her younger Brothers, that hath but short Means, to allow him thence forward out of the said Estate, 10 l. yearly toward his better Maintenance; this promise is void unless the Husband consent, because the performance thereof would prejudice him in that right which he hath during his own life in the Revenue of all the Lands and Annuities estated upon the Wife in Reversion; but if such a Wife shall promise to her said Brother to allow him the said yearly sum of 10 l. after the decease of her Husband, in case she survive him, this promise is good, though made by the Wife in her Husbands life time, and without his consent, because the Husbands right (being to cease before the Promise is to be performed) cannot be prejudiced by the performance thereof.

And

And this I find agreeable to the best Casuists, whose peremptory opinion it is, that

(b) *Husbands and Masters cannot dissolve such Vows as their Wives and*

*Servants make concerning things to be performed at such times; as they shall be from under their power. Which position if it be true (and I yet see no reason why it should not) then doubtless this Gentlewomans Vow made to her friend, though in the life time, and without the consent of her Husband, was not originally void from the inability to make it, upon this respect; that she was not sui juris so to do.*

*Point*

## Point III.

§. 8. But though I dare not say, neither do I think, that there was a nullity in it, in respect of the person, to make it void that way, yet it cannot be denied, but there was much obliquity in it, in respect of the matter, to make it otherwise utterly unlawful: in which Point much need not be said, because the truth thereof will soon appear; for there was in it manifestly a threefold obliquity, and thereby also a breach of three several Commandments. The first obliquity was in respect of the unlawful affection from which it proceeded, which being placed upon another than the Husband, and that in such a high degree, as to produce a promise of this kind, must needs be vitious, both for the object and for the measure, and such

such inordinate affection by the Analogy of our Saviours (a) expression of the Law, is a violation of the Chastity of the heart, and so a breach of the Seventh Commandment. The Second obliquity was, the want of that true conjugal love which ought to be between Husband and Wife, who ought to have a mutual (b) complacency and delight the one in the other, and to be (c) satisfied at all times with the Love, Comfort, and Society of the one of the other; which Love if it had been so thoroughly rooted and seated in the Gentlewomans heart; as it ought to have been, would have crushed all motions of unlawful affection towards a Stranger in the shell, long before they could grow to such strong Resolutions, as by the making of this vow it appeareth they did; for it is

D

not

(a) Mat. 5. 18.

(b) Prov. 5. 18.  
Eccles. 9. 9.

(c) Prov. 5. 19.

not to be imagined that such a *vow* as this could be made, and really intended to be performed, but we must needs suppose in the parties so *vowing*, a kind of *deariness* at the least, if not rather some *inward loathing* of the present *Yok*; which being contrary to that honour thst Married persons owe to their *yok fellows*, is so a breach of the *Fifth Commandment*, A *Third obliquity* there was also as a breach of the *Tenth Commandment*, against those expresse words [*Thou shalt not covet thy Neighbours Wife*] every Man and Woman being to content themselves with that *lot*, which by Gods Providence hath *befallen* them, as in all other things, so especially in that which is of the *greatest weight*, the *lot of Marriage*, without *coveting* or *lusting after* that which it hath pleased the *Wisdom* of God already to *dispose* upon



upon another; this Gentlewoman's promise then being such, as (if it should be brought to an impartial Tryal before that Tribunal which God hath erected in every ones conscience, and according to the tenor of that Divine Law, whereof no Christian should be ignorant) could not be reasonably acquitted from any one of these sinful Obliquities, but not possibly from them all, we may conclude to have been an Act utterly unlawful.

Point IV.

2. 9. But because a Man may contract an Obligation by an act not free from Obliquity, as the saying in such Cases is [*Fieri non debet, factum valet*] and we have a Ruled case for it in the Covenant, which the Princes of Israel made with the Gibeonites,

which though (b) *sinfully* made at the first, was (c) *necessarily* to be kept afterwards.

(b) Josh. 9. 14. &c.

(c) Ibid. ver. 19.

2 Sam. 21. 1. 2.

We are therefore to enquire into a *Fourth Point*, Whether the Gentlewoman having *de facto* bound her self, by such an *unlawful* promise, be still, by virtue of the said promise, bound in conscience to the performance thereof, or not? To answer directly to the Point, I take it she is not bound thereunto; for that saying [*Fieri non debet, factum valet*] hath place only there, where the obliquity that maketh the act *unlawful*, may be severed from the substance of the matter, about which the act is *conversant*; as when a Man voweth to do something, which is not in it self, and for the substance of the matter simply *unlawful* to be done; but yet voweth it, either *rashly*, and with-  
out

out due advisement, not for some indi-  
 rect and unwarrantable end, nor upon  
 slight and insufficient inducements, or the  
 like; any of these Obliquities are enough  
 to make the vow unlawful, in respect  
 of the act of vowing; yet because these  
 Obliquities do not necessarily pascup-  
 on the matter itself, or the thing  
 Vowed, but may be severed from it;  
 therefore though the act of vowing  
 were sinful, yet the Vow it self for all that  
 may stand good; and bind the Party to  
 perform it; but where the sinful ob-  
 liquity pascup on the substance of the  
 matter, or adhereth inseparably there-  
 unto; then not only the act of vowing  
 is sinful, but the performance also  
 becometh unlawful: And which Cases  
 those other sayings ought rather to  
 have place, *Juramentum non debet esse  
 vinculum iniquitatis in malis promissis re-  
 solvitur sine, in turpi voto mutatur decretum;*  
 &c.

10. If it shall be said, that this difference being admitted, will nothing availe the Gentlewoman in our present Case, to free her from the obligation of her said promise; because here the matter of promise seemeth not to be in it self unlawful, especially on her part; for if the Gentleman her Friend, were presently free from the bond of Matrimony by the death of his Wife, as the Gentlewoman now is by the death of her Husband, they might perform what they had promised either to other, by joyning themselves in Matrimony, and that without sin; which is an argument that the full obliquity was only in the act of promising; which therefore they ought to repent of: but doth not cleave to the matter of the promise, which therefore they ought not to violate. To this I answer, what in my opinion is true;

title, That if both the Parties were now actually free from the Marriage bond, they not only lawfully might, but were in conscience bound (unless some other lawful impediment should hinder) to joyn themselves together in Matrimony, because none of the fore-mentioned *Obligations*, which made the former act of promising unlawful, would fall upon the after-act of Marriage to make it unlawful. But that *Allegation* is not direct to the Point in hand, nor to the Case as it is propounded; for it may be observed from the very form of the proposal, that the matter of the promise, wherein the Parties interchangeably bound themselves, was not to Marry together, when they should be both free; upon which false ground the Objection runneth; that was indeed the thing they aimed at therein; but the end is one thing,

D 4

thing, and the matter another: but the very matter of the promise was, the continuance of their mutual affection either to other, with a resolution to stay the one for the other, when either Party should happen to be free from the bond of the present Matrimony, till the other should be also free. The continuance of which affection and resolution, will upon examination be found subject to all, or some of the three Obliquities aforesaid; and therefore as such an affection and resolution, could not be entertained at the first without sin; so neither can they be now continued in without sin; for so long as they continue, the first of the said Obliquities remaineth still, both on his part and hers; the second indeed by the death of the Husband is ceased on her part, but remaineth still on his; and the third contrarily being

being on his part ceased, remaineth still on hers, as will evidently appear to the understanding of any Man, that shall take the pains to examine it.

¶ 11. Yea, and it is further to be considered, that the continuance of such an affection and resolution may be likely to expose as well the one as the other to the assault of more strong and dangerous temptations, now since the Husbands death than before. The danger on the Gentlemans part, this, least by how much he is now by the Husband death, put into a nearer possibility of enjoying his unlawful hopes, he should grow into so much the deeper loathing of his own bed, and and so much the earnestest longing that, that which is now the only obstacle to the fruition of his desires were removed; of which thoughts,  
who

who can tell how fearful the issues might be? the *flie Enemy* being most ready at all times, to practice upon the corruption that is in the naughty heart of Man; but especially having a mighty advantage against him, when he hath got his conscience as it were in a snare, by the engagement of some vow, promise, or felled resolution. And then on the Gentlewomans part, the danger, this, least having by her own voluntary act debarr'd her self, of that which is the only allowed remedy, namely *Marriage*; she should by the just judgement of God, be left to the rage of the Disease of burning Lusts: for upon what sound warrant can she be confident, or with what Reason expect, that God should either preserve her from, or assist her against temptations in that kind, though she should seek it of him with *Fasting*, and  
Prayers,



Prayers, and Tears, so long as she  
 compass Him by persisting in a wil-  
 ful obstinacy, against that means of Re-  
 medy which He hath appointed? In-  
 deed, where the hand of God himself  
 hath prevented the use of the Remedy  
 (as if the Husband should be long de-  
 tained in a foreign Land, or held in close  
 Prison, or taken with a dead Palsie, or  
 some other bodily impotence, or the like)  
 there the Wife might comfortably  
 implore Gods assistance to preserve her  
 from being overcome by carnal tempta-  
 tions, and assuredly rest upon it by  
 faith, if she be not wanting to her self,  
 in putting to her own utmost endea-  
 vours, because she hath a Promise to  
 rest upon for that purpose; and God  
 who is faithful in all his Promises, is  
 also faithful in this, of not suffering his  
 Servants to be tempted beyond their  
 strength: but for the Wife, by some

inconsiderate act of her own, wherein she wilfully and obstinately persisteth to refuse the appointed means, and yet to expect Gods assistance nevertheless, for which she hath no Promise, is a fearful tempting of God; and it is but a just thing with God, and she suffereth it worthily for her presumption, if she be left to her self, and so wrestle with the temptation by her own strength, and so be overcome thereby: For God who hath after a sort tied himself by his free and gracious Promise to protect us in *Via Regia*, so long as we walk in the ordinary known way that he hath appointed for us, hath no where bound himself to vouchsafe us the like powerful protection *Extra viam Regiam*, if we refuse that high way to walk in by-paths of our own choosing, which present dangers on both sides, and the former Reasons laid together, do suffi-

sufficiently prove, that the Gentlewoman is not at all bound to performe her said unlawful Promise.

Point V.

¶ 12. Hitherto we have proceeded in genere judiciali, by considering of the nature and validity, lawfulness and obligation of the Promise for the time past: Now we are to deal in genere deliberativo, and to consider what in Christian Wisdom is meetest to be farther done, for the better both quieting and regulating of the Conscience for the time to come; wherein, submitting to Men of better judgements, and experience, I give my advice as followeth, viz.

First, That the Gentlewoman out of the serious consideration of the Promises, be brought to a through feeling of the grievousness of those  
sins

sins which she hath committed against God, and wherein she hath so long continued, that so she may not only be humbled in his sight with true contrition of heart, and remorse for the same, proportionably to the greatness thereof; but also be provoked to a proportionable measure of thankfulness unto him, for his gracious goodness in restraining her unlawful affections from breaking out into actual uncleanness, and preserving her when she had run out so far in an evil way, from rushing into more desperate extremities; for, *Erranti nullus terminus*: as a stone that tumbleth down a steep hill; so Mans corruption when it is once set on going, hath no stay of self till it come to the bottom of Hell, unless the Lord lay a stop in the way: and it is to be acknowledged a blessed act of Gods merciful

merciful Providence, when we have let loose the reins to our own lusts in any kind, if they be bridled from running headlong into all excess of wickedness; great sins require more then ordinary Repentance, and great mercies more then ordinary Thankfulness.

¶ 12. Secondly, That having thus humbled her self before God by inward Contrition, she also make an outward free Confession of her said sins, to him whom God hath delegated a Ministerial Power to remit sins, that she may receive Comfort and Absolution from his mouth; I mean the Priest: and this I think meetest to be done to the Bishop of the Diocese, with one or more of his Presbytery, such as he shall think good to take to him to assist him; or else to some other by his appointment: because the  
Bishop

Bishop is the chief Pastor, to whom the care of Souls most immediately belongeth, within his own Diocess; besides, that both the quality of the person (if she be of eminent Place and Rank) and the weightiness of the case, make it so much the more proper for his cognisance: But howsoever it would be done to a Man of approved wisdom, and such an one, as will be both compassionate and secret, wherein the more freely she shall make confession of her said sins, and the more chearfully she shall subject her self to perform such further acts, whether of Humiliation or Charity, as the Bishop or Priest shall advise to be done, in testimony of her unfeigned Repentance, the more sound comfort undoubtedly with the sentence of Absolution bring unto the Soul.

¶ 14. This done, then *thirdly*, that she endeavour by all *fair means*, that the Gentleman also her friend and partner, in the aforefaid Promise, may be brought to the like sight and acknowledgment, of the great sins that were enwrapped in that act, and to a true persuasion withal, that so long as he continueth in the former unlawful affection and resolution, he is not only still under the guilt of those sins, but also in near danger (without Gods great mercy preventing it) of falling into other and greater sins; for which purpose it will be expedient, that he be truly and effectually dealt withal, (yet with as much lenity as the state of his Soul will suffer, and with all possible secrecie) and that by some such person especially as he holdeth a reverend opinion of both for Learning and Piety; and to procure that this be done,

the Gentlewoman ought to take it into her own especially care; which it will concern her to do, not only in *Christian Charity* for the good of his Soul, but in *Christian wisdom* also for her own future benefit and security.

¶ 15. For when he shall be once thoroughly convinced in his judgement and conscience, of the unlawfulness of the Promise made between them, and of the sinful inconveniences that attend the continued purpose of fulfilling it, there is a fair way open for that which is next and fourthly to be done, viz. That he be then earnestly moved for his Relaxation of the said Promise to the Gentlewoman, which (being it was but a meer Promise, and no Vow, as in the first Point hath already been shewed) he hath in himself a full power to make, and this also to be done



done in the *presence* of such Persons, as they shall make *choise* of betwixt themselves to be *witnesses* of the said *Release*; for although the *Promise* being utterly *unlawful*, hath no power to *bind*, and so there needeth no *Release*, as of *absolute necessity*, in regard of the thing it self; yet such *Release* may be very *behaofeful* in regard of the Gentlewomans *person*, and for the *quieting* of her *conscience*, in case there should remain any *fears* or *scruples* behind, least perhaps her *promise* should still *bind* her; for as *Satan* laboureth to *benum* the *conscience* with *security* to make men *bold* to *commit sins* without *scruple*, till he has *drawn* them into the *snare*; so when he seeth them offer to get out of the *snare* again by *Repentance*, he is very *cunning* to inject *needless Scruples* and *fears*, if possibly he can, to hold them

in by means thereof; wherefore I hold it very expedient that such a Release, if it may be obtained, be not neglected; for thereby the binding power of the Promise, though we should suppose it lawful, should be quite taken away, so as there need no scruple to remain: *Abundans Cautela non nocet*, is a safe Aphorism; as wary men when they pay monies, besides seeing the Book crost, will crave to have an Aquittance: So it may be some satisfaction to the Gentlewomans mind, to have a solemn Release before witness, which say it should be more then needeth, yet can do no harme howsoever.

¶ 16. Fifthly, that the Gentlewoman all the while before, and so ever after that time only excepted, when the Relaxation should be made, for then it is requisite, she should be

personally present) carefully avoid the company of that Gentleman; and he likewise hers, so far as conveniently may be; but at leastwise, by no means converse together with any familiarity, especially in private; least the former unlawful affection should be kindled in either Party, and so the disease after some measure of cure grow to a more dangerous, which many times proves more dangerous than the first malady; for commonly when the unclean spirit is ejected by Repentance, if once he make himself master of the heart again (as he will attempt it, and without a good watch haply effect it) he will be sure at the re-entry, to come with a new strength, and that sevenfold, to what he had before, and needs must the end of that man be worse then the beginning: he must therefore resolve to shun all likely occasions of falling;

again into the same snare, so far as the quality of her person and condition, and the common affairs of life will permit: And she had need also to use her best care and diligence (praying to God dayly for Grace to strengthen her thereunto) to withstand all wicked temptations of the flesh that she be no more foiled thereby, neither entangled again in such sinful inconveniences, as by Gods mercy she shall be now freed from.

¶. 17, If in these Directions, I be thought to deal with too much rigour and strictness, it would be considered:

First, that it's much better to put the patient to a little more pain at the first, then by skinning the wound overly, to heal it deceitfully; and to suffer it to rankle inward, which will breed a great deal more grief at last.

Secondly,

Secondly, that since all men (through corrupt *self-love*, and privy *Hypocrisie*, cleaving to our depraved nature) are partial towards themselves, and apt to deal more favourably with their own sins, then they ought; it is therefore safest for them (in their own Cases especially) to encline to severity, rather then indulgence.

Thirdly; that there may be a mitigation used of the present Directions, according as the state of the Patient (in the several variations thereof) shall require; but that (for the avoiding of partiality) not to be permitted to the sole liberty of the party himself, but rather to be done by the advice of a Ghostly Physitian, who if he be a man of such wisdom and moderation, as is meet, will I doubt not allow a greater indulgence in case he see it expedient, then it could be safe for the

Party her self, to take of her own head.

*Fourthly*, That in all this Discourse, I take not upon me to write *Edicts*, but to give my *advice*, that is to say, not to prescribe to the judgment of others, if any shall see cause to dissent, but to deliver my own opinion (being requested thereunto by a Reverend Friend) with such a faithfulness and freedom as becometh me to do; and truly those Parties whom it most concerneth, ought not to blame me for it howsoever; inasmuch as there can be no cause to suspect that I should be carried with any personal respects to be partial either for or against either of them; so God is my witness whom I desire to serve, I had not any intimation at all given me, neither yet have so much as the least conjecture in the World, who either of them both might be.

The CASE of a  
**MILITARY LIFE.**

SIR,

**I**N referring over your friend to me, you have pitched upon one of the unfittest persons in the World, to be consulted in cases of that nature; who am altogether a stranger to the Publique affaires of Christendom, and understand nothing at all of the mutual Interests, Relations, or Transactions of foreign Princes or States; yea so little curious have I been to inform my self, so much as where the Stages lay of the chiefest Actions of these latter times abroad, or what persons were engaged therein; that I have something pledged my self (perhaps too much) with my own ignorance in our  
 home

*some Affaires: accounting it among the happinesſes of my privacy and retiredneſſ, in theſe unhappy times; that amidſt ſo much fury and bloodſhed on every ſide, it was never my hap to be within the view of any Battel or Skirmiſh; nor did I ever ſee ſo much as a Piſtol diſcharged, or a Sword drawn againſt any ſingle perſon, ſince the beginning of the Warr. I could have wiſhed therefore, ſince my opinion here in is deſired, that I had had the opportunity to have adviſed with ſome more knowing Men, and of greater experience and judgment then my ſelf in theſe matters; or at leaſt, that you had ſent me, together with the two encloded Letters, a tranſcript of your Answer (whoſe Judgment I do with great reaſon very much value) unto the former of them; for there I aſſure my ſelf, I ſhould have met with ſuch*  
*Materials*



*Materials* as would have served me for a good foundation to work upon; yet to satisfie your desire, so far as in me lieth, and the rather for the Gentlemans sake your friend, ( who though unknown to me by face, or till the receipt of your Letter, so much as by Name; yet by his Letters appeareth to be a Person of Piety and Ingenuity, and a great Master both of Reason and Language ) I have endeavoured ( with reservation of Place for second thoughts, and submission to other Judgements ) to declare what my present apprehensions are concerning the whole business; wherein the resolution of such doubts, as in point of conscience may arise, or of the most and chiefest of them, will (as I conceive) very much depend upon the consideration and right application of these Four things, viz.

I. The

I. The different sorts of Mens employments in general.

II. The nature of the Souldiers employment in particular.

III. The end that Men may propose to themselves in following the Warr; or what it is that chiefly induceth them thereunto.

IV. The condition of the Person so employed, or to be employed.

I. Considerations of Mens employments in general.

MENS employments are of two sorts.

The one of such as any man may (without blame from others, or scruple within himself) follow, meerly upon his own score, if he find himself in some measure able for it, and have a mind thereunto; he hath a power in him-

himself (and that *jure proprio*, by a primitive and original right; without any necessary derivation from others) to dispose of himself, his time and industry, in that way; for the exercise of which power, there needeth no special or positive warrant from any other person, but it is presumed he is (as in relation to others) sufficiently warranted thereunto in this, in that he is not by any Superiour Authority, Divine or Humane, forbidden so to do; and upon this account it is, that Men betake themselves, upon their own choice and liking, to Husbandry, Merchandize, Manual Occupations, the study of the Law, &c.

2. But another sort of Employments there are, whereunto a man hath not a just right primitively and of himself, neither may he lawfully exercise the same meerly upon his own choice, but

it is necessary, that that *power* should be derived upon him from some such person or persons, as have sufficient *Authority* to warrant him for so doing: Such is the *Employment* of a *Judge*, a *Constable*, an *Arbitrator*, &c. which are therefore said to be *juris delegati*, because the right that any man hath to such *Employments* accrueth unto him by virtue of that *Authority* which he receiveth by *Delegation* or *Deputation* from some other that hath a right by *Command*, *Election*, *Nomination*, or otherwise to *Empower* him thereunto, whence are those usual forms, *Quo jure*, *Quo warranto*? *Who made thee a Judge*? *By what authority dost thou those things*? or, *Who gave thee this authority*? A man may betake himself to the *Study*, and so to the *Practice* of the *Laws*, of his own accord, but he may not take upon him

to be a Judge without Commission from his Sovereign; so he may follow Husbandry, and Merchandry, upon his own choice, but he may not do the Office of a Constable, unless he be chosen by the Neighbours; or of an Arbitrator, unless chosen by the Parties thereunto.

3. Now although as well the one sort as the other, after a Man hath addicted himself to the one, or is deputed to the other, may not unfity be termed his Particular Calling, and the latter perhaps with better propriety, then the former, (for the word Calling properly importeth the Action of some other person) yet according to the common Notion, which by custom of speech among us, we have of these terms [The General and the Particular Calling] the Employments of the former sort, are usually taken to be  
the

the Particular Calling of Men; and those of the latter sort, will be found (if well considered) to fall rather under the General Calling, as branches or parts thereof, inasmuch as the exercise of such Employments, is a part of that moral duty, which all Men (according to their several respective Relations) ought to perform to others, being by them empowered thereunto, upon the tie of Obedience, Contract, Friendship, &c. but for distinction sake, as the Latins make a difference between *vita institutum* and *munus*, we may call those of the former sort, *Mans* profession, and those of the latter sort his Office; so a Man is by Profession a Lawyer; by Office a Judge; by Profession a Husbandman; by Office, a Constable.

4. To bring this Discourse home to the present business, we are next to enquire,

enquire, to whether sort of the two, the *Employment* of a Souldier doth more properly appertain; that is, whether we are to conceive of it as a *Profession* which a man may at his own choice fix upon, as his particular vocation; or rather as an *Office* of duty and service, which he is to undergo, when by the command of his Prince, he shall be thereto appointed, and so to come rather under the notion of a *General Calling*? To me it seemeth clearly to be of the latter sort. For (1.) in the passage of St. Paul, 2 Tim. 2. 4. No man that warreth, entangleth himself in the affaires of this life, that he may please him that hath chosen him to be a Souldier; the word is *ἐξολογισμῶν*, applied to him that warreth with the note of *Universality* (*ὅτι ἐξολογισμῶν*) annexed, seemeth to imply, as if he supposed that no man might go to warr, unless he

were chosen for that service by some other person that might Command it: Nor do I see (2.) what good construction can be otherwise made of that speech of our Saviour, Mat. 26. 57. *All they that take the Sword, shall perish with the Sword*; or what should be the crime there intended to be signified, by this Phrase of *taking the Sword*, if it be not *this*, for a man to take the *Sword* into his hand by his own authority, before it be put into his hand by that Supreme Power, whom God hath immediately trusted with the bearing and managing of it. Now (2.) can that be said to be a *Mans Profession*, or particular calling, which Men of all Professions are (in obedience to their Governours, and for the service of their Country) bound to perform whensoever they shall be by Lawful authority, called and appointed thereunto.

5. If



9. If these premises will be granted, it will soon appear, that the answer to the *Question* proposed, in the beginning of the former Letter (as it standeth there in *Terminis*, and in *Thesi*, abstractedly from the consideration of the person in the said Letter character'd, and those other circumstances which may vary the *Case*) must be in the *Negative*, viz. That it is not lawful to be a Souldier, upon the same account that men apply themselves to Trades, to the practice of the *Laws*, and to other (like) civil Employments.

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II. *Consideration of the Souldiers Im-  
ployment in particular.*

1. **T**HE care that ought to be in every Man that taketh upon him the exercise of any Office, to be well assured that he hath a sufficient

right and warrant for so doing, is no less requisite in a Souldier, then in any other Officer; yea rather by so much more requisite in him, then in most of them, by how much the matter he is conversant about, (*viz* the Life of Man) is of greater consequence, then are the matters in which most of them are employed; for the Souldier every time he draweth his Sword in the field, is by the very nature of his Employment supposed to do it either with a resolution to lose his own, or to take away his enemies Life; else he doth but prevaricate, and is unfaithful in the service he has undertaken: In which service if it be his fortune either to kill or to be killed, he is actually and deeply guilty; but if neither, yet that very resolution maketh him intentionally guilty of the Transgression of the sixth Commandment, *I thou shalt not kill* in

in case he have no good right, so far to dispose either of his own, or the others life. It concerneth him therefore to look well to that; both what power belongeth to him, as a Souldier, and by what Authority he claimeth the exercise of such a power.

2. Most certain it is, that properly and originally the power to dispose of Mans Life (*Jus vitae & necis*) belongeth to God alone, who is *Dominus vitae & necis*, as the sole author of Life, so the sole Lord and Master of Life and Death; some part of which power, since it hath pleased him for the good of humane Society, (in the preservation of Peace and Justice, and the punishment of such as are enemies to either) to communicate unto men (which power so communicated, is that which we use to call *Jus Gladii*,

or the power of the Sword) it may therefore be lawfully exercised by men; but within that latitude, and in order, as God hath communicated it to them, but not farther nor otherwise.

3. Now God hath not given to any man, either Sovereign or Subject, power over his own life, to destroy it by his own voluntary act in any Case; no nor yet power to expose it to the certain hazzard of being destroyed by another in fight, saving in the one only case of just and necessary defence: under which notion is to be comprehended also the hazzarding of the Princes life, in a just and necessary Warr; out of which Case, whosoever shall expose his life to hazzard by fight of his own accord; if he perish in it, cannot be excused from being guilty

guilty of his own death, nor from *usurping* a power over his own life, which God hath not allowed.

4. Add hereunto the *injustice*, that he thereby doth to his *Sovereign* and *Countrey*. God hath given to his *Vicegerents* here on Earth, a *right in*, and a *power* over the *persons* of all their *Subjects*, within their several respective *Dominions*, even to the *spending* of their *lives* in their *Countries* service, whensoever they shall be by their *Authority* required thereunto, which they cannot therefore *prodigally* spend at their own pleasure, without apparent wrong done their *Governours* interest; for as he that shall kill a *private person*, is not only an *offender* against God, and against that *person*, in depriving him of life; but is also by the Interpretation of the *Laws*, (according to the importance

of the ancient form of Enditing) an offender against the Crown and Dignity of his Sovereign, in depriving him of a Subject, and consequently of the interest he had in his person, and of the use he might have had of his service: so he that is so prodigal of his own life as to hazard it upon the Sword in fight, without his Sovereigns Authority, if he perish, is not only guilty of his being accessory to his own destruction; but doth also an act injurious and prejudicial to his Sovereign, at whose service and disposal (under God) his life and person ought to be.

5 And as his presumption cannot be excused, if he be slain upon that account; so neither can he justify the killing of another (though an enemy) in Battle, if he have no other warrant for taking of Armes, then from

from himself; for *Warr* is a kind of *judicature*, wherein the *Trince* that *Wageth* the *Warr*, is as the *Judge* that *giveth* sentence of death against the *Enemy*, as a *disturber* of the *Peace* of his *Country*, and all that *engage* in the *Warr* under him, are but as so many *executioners* of the sentence pronounced by him; and he that *executeth* the sentence of death upon another, must do it by some *lawfull Authority*, as well as he that *pronounceth* the sentence; or else he is a *Murtherer*, as well as *This*. Now the *Souldier* that by *fighting* on the one *side*, doth *ipso facto* declare against those of the other *side* as *Enemies*; if he so *engage* of his own mind only, he doth indeed, upon the point, take upon him the *Office* of a *Judge*, being none, and so *runneth* before he be *sent*: or if it shall be said in his behalf, That he doth it not as a *Judge*,  
but

but as the Executioner of the sentence pronounced by that Prince into whose service he hath put himself, and who by the accepting of his service hath sufficiently authorized him to do such execution: Your Letter hath suggested to me this ready Answer, That the sentence pronounced by one that is not his Lawful Sovereign, and by consequence, whose judgment he is not warranted to follow, is of no more validity (as in relation to him) then *Sententia lata a non iudice*, and therefore can be no warrant to him to execute it. True it is, that with licence from his Sovereign, he may serve under another Prince, and consequently do such execution, as we now speak of; because the Sovereign by so licensing him, doth really referr him over from himself to anothers judgment, and consequently warrant him to follow the same, and so render him capable



capable (upon the others acceptance) to execute it. All this is true, but nothing to our purpose, because it doth *destruere suppositum*; for we now suppose the Case of a Souldier putting himself into service, under a Foreigner of his own mind, and where himself thinketh good, without the knowledge or licence of his own lawful Sovereign.

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*III. Consideration of the end to be proposed by the Souldier.*

1. *S*ith the goodness or badness of Mens actions and undertakings dependeth very much upon the end which they propose to themselves therein; he that would desire to lead a Souldiers life, must narrowly examine his own heart, what it is *bona fide*, and in very deed, that first and chiefly induced him to that desire, and

and what affinity there is between that end, which he proposeth to himself, as the main scope of his Intentions, and that which is or ought to be the true end of the thing it self, the true end of the Warr, which only can warrant it lawful, we all know is the necessary preservation of a Common-wealth in Peace, by repressing (or preventing) all Seditions, or Hostile attempts to the contrary; but as in other things it often happeneth, according to that saying [*Finis non idem est artis & artificis*] so here many times the warrior hath another end to himself far distant from that of Warr, and the more distant ever the worse; as on the contrary, the action is ever by so much the better, by how much the intention of the person hath a near affinity with, or a directer tendency unto that for which the thing it self was ordained.

2. Now

2. Notw<sup>th</sup> the ends, which men desirous to follow the *Warrs* do usually propose to themselves in so doing, are especially one of these Three, *Lucre*, *Honour*, or to do their *Countrey service*; concerning which we are to enquire severally, whether or no, and how far forth, any of these may be a sufficient inducement to a *Christian*, or but morall man, to follow the *Warrs*, as his particular *Calling*, or *Profession*.

3. For *Lucre* first: He that hath a *Warrant* otherwise to imploy himself as a *Souldier*, may doubtless lawfully both receive pay and require it; *John the Baptist* allowed the *Souldiers* to *drinke*, *Luke* 3. 14. And *St. Paul* thought it not reasonable, that any man should go to *warfare* at his own charges, *1 Cor.* 9. 7. Nor so only, but he may also, in putting himself upon  
that

that *employment* (being called there-  
unto) have an eye to his profit, and  
an *actual intention* (if moderate and  
otherwise rightly qualified) of getting  
himself a *livelyhood*, yea and of raising  
himself a *fortune* (as we call it) by  
his *service* therein; even as men in the  
choice of other *Professions*, or under-  
taking *Offices*, usually do and so may  
do without sin; but to propose to  
himself *Lucre*, as the *main end* and  
*scope* of following the *Warrs* (as it is  
evident by their actions, that very  
many of our Common Souldiers do)  
is one of the most *hateful* and *unrighteous*  
things in the World: so far is  
it from being a *sufficient inducement* to  
any man to make that his *Profession*.  
How can it be imagined to be  
consistent with that *Charity*, *Justice*,  
and *Moderation*, that should be in  
every *Christian* to set up a *Trade* of  
killing

*killing of Men for Money? The meer Mercenary Souldier therefore, or a Souldier of fortune (as we call him) I finde every where inveigh'd against, as one of the greatest Scourges or Plagues of Mankind; for such men never look at the Cause they engage for, whether it be right or wrong, but at the pay and prey; and therefore they take their best Markets, and care not whom they undo, kill and oppress, by Violence, Rapine, Murther, and Plunder, so they may but enrich themselves thereby, and can do it with safety: Nor will they stick, if there be an advantage to be made of it; and that they can spy a fit opportunity for it, either to betray their own party, or to revolt to the other side, or to do any other act, though never so base and dishonest, Nulla fides pietasque viris qui castra sequuntur.*

4. Next

4. Next the intuition of Honour and Glory to be acquired by worthy Actions in the Warrs, may be not only lawful, but commendable also and useful in a Souldier; and truly this of Glory is a more noble end, of a higher pitch, and more befitting a Generous Spirit by much, then that of Lucre is; both because Men of eminent Birth, and Place, and Parts, are aptest to be affected with it; whereas Gain worketh most upon the lower sort of Men, and also because it putteth Men upon more worthy Enterprizes, and such as may win Honour and Reputation; and restraineth them from those baser acts of Injustice, Cruelty, and Rapine, to which the desire of Gain usually prompteth the mercenary Man; but yet as to the warranting of the Souldier for making that his Profession, (which is the Point now in hand) this of Glory is  
of

of no importance, then was that of Gain; for the right end of Warr being a safe and honourable Peace, there is something common to both (consequential to the desire of Glory, as well as of Gain) so inconsistent with that end, that it setteth them at an equal, or not much unequal distance therefrom: For as he that aimeth to gain by the Warrs, cannot but desire the continuance of Warr, that so his hopes of gain may continue; so he that aimeth to get himself Glory by the Warrs, cannot but desire the continuance of Warr, that so the opportunities of encreasing his Glory may continue; for there is a Dropsie of vain-glory in the Ambitious, as well as of Avarice in the Covetous, as thirsty and unsatiabie in the one, as in the other; whence it cometh to pass, that both the one and the other use their utmost

Wits and endeavours to find occasions to lengthen the Warrs, and to obstruct and retard (so much as lieth in them) the advices of Peace: Nay, let me add moreover, that in this respect at least (*viz.* as to the effectual hindring of Peace) that of Honour and Glory, is much the more dangerous end of the two; because this humour is aptest to seize upon the greatest persons, and such as by priviledge of their birth, eminency of their places, activeness of their spirits, glory of their former actions, or other like advantages, bear a great sway in Counsels, and are of some authority in the Armies: whereas the Peasantry, in whom most of the other humour (that of base Lucre) aboundeth, have neither the wit nor the power ordinarily to do much harm. It hath therefore been a constant observation in all times and places, that the



the embroyling most Common-Wealths in Wars, in the meantime, and working their ruin in the end, hath grown from the restlessness of some ambitious spirits, and their immoderate thirst after Honour and Glory.

*Patriam cemen obruit olim  
Gloria paucorum, et laudis tituli cupido.*

Juvenal. Sat. 100

5. So that if there be any possibility of finding a person capable to take upon him the employment of a Soldier, as his proper Profession, it must be among those that propose to themselves the same end therein, that is, or ought to be the end of War; that is to say, those that after an impartial search of their own hearts, can truly say (and not pretend it only). That their chiefest aim in applying themselves

to the Warrs, is to do their King and Country service, in procuring or preserving the Peace thereof: which no man can truly say, but he that preferreth the publick Good, and the Peace of his Country, before all private interests. The tryal whereof is, if he take up Armes with this Resolution, and by his after carriage make it good, not to do any act, or enterprise any thing for his own benefit, glory, or safety that may hinder; nor to refuse any service or hazard, that may probably promote the obtaining of that end; which Qualification supposed, I deny not but that a Man may find warrant to go on in the way of a Soldier as his proper Profession, and that in two Cases. First, that which (in the nature of the Employment itself) is rather an Office, than a Profession (such as we have

have already shewen the Souldiers employment to be) may yet become to the person so imployed, as his proper Profession, if he shall be appointed thereunto by lawful Authority; especially if it be done with a declared intention (whether expressly or interpretatively declared) of continuing him for life, or for any long space in the same; and that the said imployment during such his continuance therein, shall require his personal attendance, either constantly or for the most part: As for example, a Lawyer by Profession and Practise, is by his Sovereign called to be a Judge of either Bench, or a Baron of the Exchequer, the Office of a Judge is now become his Profession, or particular Vocation, because it is supposed that he is to continue in that Office; and the execution of that Office will require his attendance

attendance thereupon, in the yearly Terms and Circuits: but if the King shall appoint a Serjeant or Counsellor at the Law, by his particular Commission to ride this Summers Circuit, into such and such Countries; and there to execute the Office of a Judge, the Party so constituted and appointed hath by virtue of that Commission, full power to do the Office of Judge in that Circuit, and is to be received and honoured with the title of Lord, and all other testimonies of honour and respect, in as much ample manner as other Judges in their Circuits are; yet doth he not thereby come to be denominated a Judge, as if that were his proper Profession, or ordinary Calling; as in the former Case; because he is impowered to execute the Office of a Judge, but during the time of that Circuit only. Nor is his

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atten.

attendance upon that Office any longer required, or so much as allowed him. In like manner, if the King of England shall make choice of some person of Quality to be Governour of Dover Castle, or of Barwick, that Office then is as his Profession or particular Calling; because it is to be supposed, he is to continue in that employment, and to attend the same, untill the Kings pleasure be further known therein: but if the King upon some suddain Insurrection and Invasion should raise an Army, and make choice of some person of like Quality to have the Conduct thereof, for the Suppressing or Repelling such Insurrection or Invasion, his Imployment in that service being but temporary and to determine, as soon as the business were ended, should not otherwise then in curtesie, denominate

him a *General*; or at least not be esteemed as his permanent profession, but only as a *transient Office*: This is one Case.

7. The other Case (which is more pertinent to the business of these Letters) is of such as desire to employ themselves in the exercise of *Armes* in *Foreign Service*, that they may attain to such knowledge or experience in the *Art Military*, as might the better enable them to do their *King* and *Country Service*, whensoever there should be need thereof; for since the *Manegery* of *Warr*, is long since grown into an *Art*, and that not to be learned from *Books*, or from private study; but to be acquired by much practice, and experience, and diligent observation: and the rather, for that the particular *Rules* of that *Art*, do not stand at such a certain stay, as those

those of most other *Arts* do, but are dayly altered and improved by new inventions: It is very necessary for every *State* to be well provided of a good number of such persons of their own *Nation*, as should be expert and skilful in that *Art*; least they should be forced, if an unexpected *Warr* should happen, to call in *Foreigners* for assistance, which is both dishonourable and dangerous: the necessity hereof too well appeareth by the evill consequences of the neglect of it in this *Nation* in these latter times, especially in the *Reigns* of the two last *Kings*, by reason of the long *Peace*; and (which commonly breedeth out of it, as the rust and canker thereof) tenderneß of *Education*, and voluptuous living. The *Nobility* and *Gentry* of *England* in the generality of them, had so much degenerated from the *Martial Prowess* of their  
their

their *Ancestors* renowned in all *Histories*, that in the beginning of these *unnatural Warrs*, there were very few to be found of our own *Nobility* and *Gentry*, fit to have *command* in an *Army*, or that knew any thing belonging to the *Art of Warr*; inso much as use was made on both sides of *Merccenary Men*, and most of them *Scots*, who being for the most part bred up abroad (in *France* especially, a place of much action) had learned *experience* more then our *English* had in such matters, by which *advantage* they had so wound themselves into the *chief places of Command*, and had such an *influence* into the *Councils* of both sides, that the *Warr* was in a manner *wholly ordered* by their *directions*, witness the great power that *Rutben*, *Urrey*, *King*, *Meldram*, &c. had in the *Armies* on either side.



8. The weightiness then of *Princes Affairs*, upon all emergent occasions rendering it necessary for them, not only to have power to command their *Subjects* of whatsoever Rank or Profession to serve as *Souldiers* in their *Wars*; but also to provide aforehand for a supply of able men, both for places of *Command*, and to execute other parts of that service, which cannot be done, unless a considerable number of persons be trained up in the exercise of *Armes*, and bred *Souldiers*: It is consequently necessary, that some persons be, either by their Authority appointed, or at least by their permission allowed, to addict themselves to a *Military course of life*, as their proper Profession and Calling, which Authority or Permission from their *Sovereign*, will sufficiently warrant to their conscience the choice of that Profession; supposing (as  
now

now we do) that the intention be right, the person meetly qualified and all other Cautions in respect of the matter, manner, circumstances and otherwise duly observed.

9. The necessity of learning this Art granted, there may sometimes follow a further necessity, viz. of learning it abroad, and after it is learned, of exercising it abroad, and in Foreign service, and that in these two Cases: First, when the Soldiers own Country, whereunto his service is principally, and in the first place due, hath either the happiness to be in a settled Peace and Freedom, under the Government of a lawful Sovereign; or the unhappiness to be in such servitude, through the prevalence of an Usurping Power, that no Resistance can be made there against; for in the former Case, there is no exercise at all of the Souldiers faculty in earnest; and

and of what little avail to the attaining of any solid knowledge, or experience in the *Art Military*, such superficial trainings, as were used (and those but very seldom neither) by the *Lieutenants* of the several *Counties* here in *England*, with the *Country-Captains* and *Musters-Masters* are (besides that our own reason will tell us) the *Rapness* and *Unserviceableness* of our *Trained-bands* in the beginning of the late *Wars* did abundantly manifest: and in the latter Case, the *Souldier* if he will have *Imployment* at home, must either engage on the behalf of an *unjust Power*, or else run upon his own certain *destruction* to no purpose.

IV. *Confi-*

IV. Consideration of the condition of  
the Person.

I. **T**his must be considered too,  
for the different conditions of  
persons, may make a great difference  
in the lawfulness or unlawfulness of  
their actions, according to the old say-  
ing, which holdeth true in this sense  
also, no less then in that other in which  
it is commonly used (relating to Mens  
corrupt partialities) *Duo cum faciunt  
idem, non est idem*. In your Friends  
second Letter, I find a demand made  
(as in the way of Reply to some pas-  
sage of your Answer to his first Lec-  
ter) to this purpose; Suppose two great  
Princes (as France and Spain for in-  
stance) have had long Warrs toge-  
ther, and the justice of the Cause ap-  
pear neither more nor less, on the one  
side,

side, then the other, if in case a third Prince or State, out of a sincere desire to *Establish the Peace of Christendome*, after other offers and mediations for that purpose made in vain, might lawfully joyn in *Armes* with the one party to force the other to Peace, why a private person might not as lawfully (having the same intention) enter in to *Armes* for the same purpose; and the reason of demand thereof is, because every Prince or State is (in relation to other Princes and States) but as one private man to another; for being called to the Regiment of his own people only, he is but as a private man in *Aliena Republica*.

2. But that there is a great difference between a Sovereign Prince and a private person in this affair, it cannot be denied; insomuch that I find in the very same passage (put in as it were

were by way of *Objection*) three very considerable differences. First, That *Princes* may, and sometimes are obliged by *Articles* and *Covenants* for the defence of their *Allies* to take up *Armes*, which cannot be the case of *private Men*. Secondly, That *Princes* may see cause to set in for their own *safety* and *interest*, least the *prevailing party* might grow too *Potent*, and so themselves might be oppressed by him. Thirdly, there is a greater probability in a *Prince* of compassing that *Noble* and *Glorious end*, *The Peace of Christendome*, then can be in a *private Man*. All these differences are allowed there as true; but yet excepted against, as not contributing any thing to the *justice* of the cause which is here the *Question*.

3. If these do not, yet a *Fourth* difference there is, that will (as I conceive)

ceive) manifestly contribute thereunto,  
 to wit, that *Jus Belli*, is *Penes Principem  
 solum*: in the business of Warr, Prin-  
 ces have a judicial, private Men an ex-  
 ecutive power only; and he that hath  
 no power but to execute the sentence of  
 a Judge, is bound to waite the Judges  
 sentence before he offer to act; other-  
 wise he shall act beyond his lawful  
 power, which is unjust. Not but that  
 a Prince if he raise a Warr where he  
 ought not, is unjust too; even as a  
 Judge is unjust, which pronounceth a  
 wrong sentence: but herein is the dif-  
 ference between them for taking up  
 of Armes. The Prince having *jus  
 agendi* in that behalf, may do it just-  
 ly; and he may do it unjustly; yet  
 where he doth it unjustly, doth but  
*abuti jure suo*: but the private person,  
 not having *jus agendi*, in that respect  
 cannot (without the Authority of  
 H the

the Sovereign ) do it otherwise then unjustly ; because in so doing, he doth without leave *uti jure alieno* , which is alwayes unjust. It is one thing for a Man to use (whether well or ill) a power that of right belongeth to him, and another to assume a power that of right belongeth not to him ; the one is not unjust, unless he abuse his Power ; the other is if he use it at all.

4. Neither perhaps will the Reason alledged to the contrary (viz. that a Prince in point of justice and power is in *Aliena republica* but as a private person ) bear so much weight as is laid upon it, if one Point be well considered, which I think will prove a truth ; though it be very tenderly handled ; otherwise it may prove very dangerous, both because it may seem a Paradox to those that have been little



little conversant in *publique Affairs*; as also, and especially, because it may, by racking it too high, be easily wrested to a mischievous construction, for the Patronage of any Tyrannical action; the point is this, that *Justitia politica*, and *Justitia privata*, have not in all the same adequate measure. Princes are bound to be just, as well as the meanest private men are, and obliged to keep faith both with *Friends* and *Enemies*, every whit as exactly and punctually, without equivocation, reservation, or other eluding devices, as they; of all this no man doubteth: but it is not therefore necessary, that the Rules of justice, whereby the Councils and Actions of Princes and States, in their mutual Relations are to be measured, should be precisely the same with those which measure the dealings of Private men one with another.

5. And the reason of the difference is evident; private Mens Controversies may be decided, and their Injuries repressed or punished, by the positive Laws of the State whereof they are Members; and consequently subject to be ordered in all their dealings by those Laws; which positive Laws (together with the Law of Nature, and the Divine Law, which are common to all Men) are the adequate Rule, whereby the Justice of private persons, and of their actions is to be measured; but since Princes and States are not subject to any such positive Laws common to them both, as may determine their Differences and Controversies; The great necessity of Humane Affairs, hath (for the good of Mankind in the preservation of Peace) introduced by the common

consent

consent of Nations, another Law of larger extent, that which we peculiarly call *Jus Gentium*, or the Law of Nations (whereof that which we also call the Law of Arms, is one special part), by which the Law of Nations (together with the Law of Nature, and the Divine Law as aforesaid) the Justice of Princes and States, and of their Actions, is as by the proper and adequate Rule thereof to be measured. Whence it cometh to pass, that sundry things are by the Rules of Politique Justice allowed as lawful and just between Princes, which between private men, would by the rules of meer moral Justice, be condemned (and that deservedly too) as unjust and unlawful: There are sundry *Arcana Imperii*, some arts and simulations for maintaining Intelligence abroad, for concealing and disguising

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guising Councils at home, in the Instructions of Embassadors and managing of Embassies, in making Alliances and Confederacies, but especially in the persuance and effects of Warr, which seem much to swerve from the ordinary Precepts of morall Justice; which yet (*sic integrâ & citra dolam malum*) are by the consent of Nations allowed to be used, and so must be, or else there could be no secure living in the World in any Society; that saying of his *Atque ipsa utilitas justî prope mater & æqui*, had somewhat of truth and reason in it.

6. The truth and reasonableness of what hath been said will appear (omitting many other) in these few Instances. First, When a Town is taken by the Enemy, by the Law of Nations, the spoil thereof falleth to the

the Conquerour, which if he give to the Souldiery to plunder (as usually is done) every Souldier thereby acquireth a just Right and Dominion in that which he can lay his hand on first, and take into his Possession. Secondly, It may sometimes concern a Prince or State in point of Honour or Safety to vindicate himself by Warr, for some wrong offered to his Merchants, or for some Rudeness or Incivilities done to his Ambassador (for even these, in case Reparation be demanded, and denied, have been ever held just causes of Warr; as *Amphitruo* in *Plautus* rendereth that as a sufficient reason of his Warr, *Nimis ferociter legatos nostros increpant*) in this case it is by the Law of Nations allowed him, not only to fight against the Prince himself, who yet only did the wrong, but to wast

his Country, fire his Towns and Villages, and spoile thousands of his innocent Subjects of their fortunes and lives in persuance of his just revenge; but if a private Gentleman wronged by his Neighbour should in like manner, in revenge of that wrong, beat his Servants, vex his Tenants, and seek his or their undoing, the act were palpably most unchristian and unjust. Thirdly, Since potent Princes, have for the most part, great Ambitions (and Ambition is a boundless lust) it behoveth a Prince for his own safety, to have a watchful eye over the Motions and Designs of a potent Neighbour, almost as much as of a declared Enemy; and therefore wise Princes have been ever carefull by all just means to ballance their neighbour Princes and States, as near as they could; in such a proportion as might hinder the too much overgrowth

growth of any one above the rest: In order whereunto it hath been held lawful for a Prince, laying aside the consideration of the cause, to joyn in Armes with the weaker, for his assistance against his Potent Adversary, who else were likely in a short time to swallow him up, whereby he should become formidable and dangerous, as well to himself, as to the other his neighbour Princes and States; upon which account alone, were there no other reason besides, it would be as just for all Christian Princes to compose their own quarrels, and to aid the Venetian, and Hungarian, Persian or Tartar against the Turk, as it is expedient and honourable for them so to do: but what is thus allowed just in the waging of Warr between Princes; if in a Wager of Law a private person, should attempt the like, viz. to assist with his

his *purse* and *pains*, a *Poor man* against a *Rich*, without considering the *equity* of the *cause*; the *act* were (as in the former Instance) palpably *unjust* and *unchristian*: Instances might be produced many more to the same effect, were it needful: but these I think sufficiently evidence the *truth* of what I undertook to shew in this particular.

7. There are also sundry other *circumstances* considerable concerning the *condition* of the *person*, which may render the same *undertaking* *unlawful* to one, which yet may be *lawful* for another, or more or less *expedient* or *inexpedient* for one then for another, supposing both *private persons* and *Subjects*; as namely, whether he be a *person* of *Honour* and *Estate*, or a *man* of *ordinary rank* and *fortune*; whether a *single man* or *Married*? if *Married*; whe-



whether he have the *consent* of his *Wife* or no? and whether such *consent* were a *free* and *rational* *consent* in the *Wife*, arising from a *Judgment* convinced of the *fitness* of the *undertaking*, or rather *Drung* from her by the *importunity* of the *Husband*, and her *facility* in *yielding* to the *potency* of his *desires* therein? whether the *necessity* of his *domestical* *Affairs*, and *Oeconomical* *Relations* will brook his *absence*, for so long a time, as must be spent in that *Employment*; or will not rather require his *presence* and *care*, for the *menagery* thereof in the mean time? and an hundred other like *doubts* and *difficulties* meet to be taken into *deliberation*, and *unprejudicately* weighed, against those other *probabilities* and *inducements*, which at first kindled and after fomented his *desires*, before he imbarque himself in that *Employment*:  
and

and yet when all is done, it were safer for him ( in my opinion ) to forbear then to proceed in his intentions, unless he shall be assured, that he hath the free allowance of his Sovereign, thereunto either expressed ( which would be the clearest warrant for his conscience ) or at leastwise upon very pregnant grounds of probability presumed.

The

The CASE of  
*S C A N D A L.*

1. **I**N judging of Cases of Scandal, we are not so much to look at the event what that is, or may be; as at the cause whence it cometh; for sometimes there is given just cause of Scandal, and yet no Scandal followeth, because it is not taken: sometimes Scandal is taken, and yet no just cause given; and sometimes there is both cause of Scandal given, and Scandal thereat taken: but no man is concerned in any Scandal, that happeneth to another, by occasion of any thing done by him; neither is chargeable with it, farther then he is guilty of having given it: If then we give  
 Scandal

Scandal to others, and they take it not, we are to bear a share in the blame as well as they, and that a deeper share too, (*Vae homini, Who to the Man by whom the Offence cometh, Matth. VIII. 7.*) but if they take Offence, when we give none, it is a thing we cannot help, therefore the whole blame must lie upon them; wherefore if at any time any doubt shall arise in the Case of Scandal, how far forth the danger thereof may or may not oblige us to the doing or not doing any thing proposed, the Resolution will come on much the easier; if we shall but rightly understand, What it is to give Scandal, or how many wayes a Man may become guilty of Scandalizing another by his example. The wayes (as I conceive) are but these four.

2. The *first* is when a Man doth something before another Man, which is in it self evill, unlawfull, and sinfull; in which Case neither the intention of him that doth it, nor the event, as to him that seeth it done, is of any consideration; for it mattereth not whether the doer had an intention to draw the other into sin thereby or not: neither doth it matter, whether the other were thereby induced to commit sin or not: the matter or substance of the action being evill and done before others; is sufficient to render the doer guilty of having given Scandal, though he had neither any intention himself so to do; nor were any other person actually Scandalized thereby; because whatsoever is in it self, and in its own nature evill, is also

also of it self and in its own nature Scandalous, and of evill example. Thus did Hophni and Phineas the Sons of Eli, give Scandal by their wretched prophaneſſe and greedineſſe about the Sacrifices of the Lord, and their vile and ſhameleſſe abuſing the Women, 1 Sam. II. 17, 22. And ſo did David alſo give great Scandal in the matter of Uriah, 2 Sam. xii. 14. Here the Rule is, Do nothing that is evill, for fear of giving Scandal.

3. The ſecond way is, when a Man doth ſomething before another, with a direct intention and formal purpoſe of drawing him thereby to commit ſin; in which Caſe, neither the matter of the action, nor the event is of any conſideration; for it maketh no difference (as to the ſin of giving Scandal) whether any Man be eſſentially

Actually entited thereby to commit sin,  
or not; neither doth it make any  
difference, whether the thing done  
were in it self unlawful or not; so as  
it had but an appearance of evil;  
and from thence an aptitude to draw  
another to do that (by imitation)  
which should be really and intrin-  
sically evil, the wicked intention alone  
(whatsoever the effect should be, or  
means soever should be used to pro-  
mote it) sufficeth to induce the guilt  
of giving Scandal upon the doer.  
This was Jeroboam's sin, in setting  
up the Calves with a formal pur-  
pose and intention thereby (for his  
own secular and ambitious ends) to  
corrupt the purity of Religion, and  
to draw the people to an Idolatrous  
worship, for which cause he is so  
often stigmatized with it; as with  
a note of Infamy, to stick by him  
I whilest

whilest the world lasteth, being scarce  
ever mentioned but with this ad-  
dition, *Jergham the son of Nebat*  
*that made Israel to sin.* Here the Rule  
is, *Do nothing (good or evil) with an in-*  
*tention to give Scandal.*

(*non tam yd*) *scilicet ob* or *ratione*  
4. The third way is, when a  
Man doth something before another,  
which in it self is not evil, but indif-  
ferent, and so according to the Rule  
of *Christian Liberty*, lawful for him  
to do, or not to do, as he shall see  
cause (yea, and perhaps otherwise  
commodious and convenient for him to  
do,) yet whereat he probably fore-  
seeth the other will take Scandal,  
and be occasioned thereby to do  
evil. In such Case if the thing to be  
done, be not in some degree (at  
least prudentially) necessary for him  
to do; but that he might, without  
great



great inconvenience and prejudice to  
 himself, and any third person, leave  
 it undone, he is bound in Charity  
 and Compassion to his Brothers Soul,  
 (for whom Christ dyed) and for the  
 avoiding of Scandal to abridge him-  
 self in the exercise of his Christian  
 Liberty for that time so far, as  
 rather to suffer some inconvenience him-  
 self by the not doing of it, then by  
 doing of it to cause his Brother to  
 offend; the very Case which is so  
 often, and so largely, and so ear-  
 nestly insisted upon by St. Paul,  
 Romans xiv. 13, -- 21. & xv. 1, -- 3.  
 1 Cor. viii. 7, -- 13. & ix. 12, 22. &  
 x. 23, -- 33. Here the Rule is, Do  
 nothing that may be reasonably for-  
 born, whereat it is like Scandal will  
 be taken.

of sinning his neighbour's  
 evils. The Last way is, when a  
 Man doth something before another,  
 which is not only lawful, but (ac-  
 cording to the exigencies of present  
 circumstances *pro hic & nunc*) ve-  
 ry behoofeful, and in some sort (pri-  
 dentially) necessary for him to do;  
 but foreseeth in the beholder a pro-  
 pension to make an ill use of it, and  
 to take encouragement thereby to  
 commit sin; if there be not withall  
 a great care had to prevent, as much  
 as is possible, the Scandal that might  
 be taken thereat: for *Qui non pro-*  
*hibet peccare, cum potest jubet.* In  
 such case the bare neglect of his  
 Brother, and not using his utmost  
 endeavour to prevent the evil that  
 might ensue, maketh him guilty;  
 upon which Consideration stand-  
 eth the equity of the Judicial Law  
 given

given to the Jews, Exod xxi. 33.  
34. which ordereth that in case a  
Man dig a Pit or Well for the use  
of his Family, and (looking no far-  
ther then his own Conveniency)  
put no cover on it, but leave it open,  
whereby it happeneth his Neigh-  
bours Beast to fall therein and perish,  
the owner of the Pit is so make it  
good, in as much as he was the  
occasioner of that loss unto his Neigh-  
bour, which he might and ought  
to have prevented: In this last Case  
the thing is not (for the danger of  
the Scandal) to be left undone, sup-  
posing it (as we now do) other-  
wise beboofeful to be done; but  
the action is to be ordered, and car-  
ried on by us, for the manner of  
doing, and in all Respects and Cir-  
cumstances thereunto belonging,  
with so much clearness, tenderness,

and moderation, and wisdom, that so many as are willing to take notice of it, may be satisfied that there was on our part a reason of just necessity that the thing should be done; and that such persons as would be willing to make use of our example, without the like necessity, may do it upon their own score, and not be able to vouch our practice for their excuse; even as the Jew that stood in need to sink a pit for the service of his House and Grounds, was not (for fear his Neighbours Beasts should fall into it and be Drowned) bound by the Law, to forbear the making of it, but only to provide a sufficient Cover for it, when he had made it. Here the Rule is, Order the doing of that, which may not well be left undone, in such sort, that no Scandal  
 may,

may, through your default, be taken thereat.

6. I do not readily remember any doubt that can occur about the reason of Scandal, which may not be brought within the compass of these four Rules; and then the right applying some or other of these Rules, will give some furtherance towards the resolution of these doubts.

## The CASE of

*A BOND taken in the  
KING'S Name:*

*Proposed July 1638,*

**R. C.** Was seized in fee of certain Houses of small value, with the Appurtenances; and in the year 1635, while Owner of the said Houses, he entreated A. B. to be his Surety for One hundred Pounds; and continued the same at Interest till 1639. At which time he requested A. B. to discharge that Bond, and in consideration thereof, selleth the said Houses to A. B. and his Heirs for ever; the said R. C. also buyeth of a Merchant a parcel of Goods; the Merchant being a Receiver of some  
part

part of the late Kings Revenue, and under pretence of a privilege thereby, taketh a Bond of the said R. C. for the payment of Two hundred pounds to himself, but in the Name of the late King, as if indebted to the King; and under that pretence, procureth an extent upon the Houses sold to A. B. and maketh seizure thereof: Was R. C. seized of the same, when he entered into that Bond?

The said King 1640. published a Proclamation, wherein he declared, That the taking of such Bonds, was contrary to His Intention, and an abuse of his Prerogative, and prohibited all such crafty Courses, as tending to the Oppression of his Subjects; and it is to be noted, that the said Proclamation was published two years before the extent was executed upon the Houses, which nevertheless have been

been held under that extent about fourteen years, which is beyond the value of the Houses.

The said R. C. died poor, the Merchant is dead also, without any Child, leaving an Estate behind him of Twenty thousand Pounds, as is supposed; a great part visible in Lands, as appeareth by his last Will upon Record.

Advice of Council at Law being taken, how the said A. B. may be most readily relieved; he is directed to Petition the present Supreme Power to pardon the Debt; because taken only in the Kings Name, when there is no Debt due to him from R. C.

As the Houses, which nevertheless have been



*As to the Case proposed.*

¶ I am clearly of opinion, that the taking of Bonds in the Kings Name, to the meer behoof, and for the advantage of private persons, when there was such Debt really due to the King, was a fraudulent and unjust Act from the beginning; so for though it were not actually forbidden, and so might perhaps be valid enough in foro externo, till the issuing out of the Kings Proclamation in that behalf; yet was it in point of conscience unlawful before, as being a crafty course: so refused by the King himself, and guilty of a double injustice, the one to the King, as an abuse to his Prerogative, the other to the Subjects as tending to their oppression, as by the

the Proclamation is recited, and that therefore

2. Neither might the *Merchant*, whiles he lived, nor ought his *Executors*, now he is dead, to make advantage of the *Kings Name* used in that *Bond*; nor might be then, nor may they now, by virtue of the *Kings Prerogative*, or under the colour thereof, for the recovery of the said Debt, use any way to the prejudice or damage of the *Obligee*, or of any *Purchaser* from him, other then such, as he or they might have used, in case the *Bond* had been taken in the *Obligee's* own Name, and not in the *Kings*.

If any *Proceedings* have been made already, in pursuit of the Debt, due upon the said *Bond*, upon no other

other ground or colour, then the Prerogative aforesaid, whereby the said A. B. cometh to be endamaged or prejudiced more, then otherwise he should have been; that the Executors ought to make him some considerable satisfaction for the same, although perhaps not to the full of what he hath suffered, or would demand; yet in such a proportion, as to the judgment of indifferent persons (in a case wherein both parties, if they must do what is fitting and just, are sure to be losers) shall seem reasonable, in case the parties cannot accord it between themselves.

4. Whereof although, through the corrupt partiality, that is in most, I may truly say, all men more or less, I do not apprehend any great likelihood (for neither part would, and yet

yet both must be losers) yet I should  
advise that tryal were made thereof  
in the first place, as the most kindly  
Christian way of growing to peace,  
if parties will be perswaded to meet  
about it, and can be made Masters  
of their own passions when they are  
met, and surely matters might easily  
be brought to a handsom conclusion,  
if both parties, but especially the  
Executors, who seem to have the ad-  
vantage in Law, would not stand too  
much upon (whatsoever advantage  
they may seem to have, but (as in  
conscience they ought) submit both  
that, and all other circumstances ap-  
pertaining to the business, and indeed  
their whole mutual demands, to the  
final determination of that transcendent  
Law, which Christ hath established,  
as the only Royal Standard, whereby  
to measure the equity of our actions,  
in

in all our dealings towards others,  
viz. To do as we would be done unto;  
or which cometh nearest, Not to do  
that to another, which if he should do to  
us (supposing his Case was ours) we  
should think our selves scarce justly and  
fairly dealt with. *Not to do that to another, which if he should do to us (supposing his Case was ours) we should think our selves scarce justly and fairly dealt with.*

5. But lastly, in case no such ac-  
cord can be made, ~~either by Agree-~~  
ment of Parties or mediation of Friends,  
and that through the only default and  
stifness of the Executors; A. B. ha-  
ving by all fair wayes faithfully sought  
and endeavoured the same, I see  
not but the said A. B. may (but not  
to be done, but as his last refuge)  
seek to relieve himself according to  
the advice of his Council, by making  
his Addresses to such person or per-  
sonage, as for the time being, shall be  
in actual possession of the Supreme  
Power,

